United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 290, AFL–CIO (Streimer Sheet Metal Works, Inc.) *and* Sheet Metal Workers International Union Local No. 16, AFL–CIO *and* Hoffman Construction of Oregon. Cases 36–CD–202 and 36–CD–203

December 7, 1995

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

The charges in this Section 10(k) proceeding were filed on March 3, 1995, by Sheet Metal Workers International Union Local No. 16, AFL–CIO (Local 16) in Case 36–CD–202, and by Hoffman Construction of Oregon (Hoffman), in Case 36–CD–203. Both charges allege that United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 290, AFL–CIO (Local 290) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing subcontractor Streimer Sheet Metal Works, Inc. (Streimer), to assign certain work to employees represented by Local 290 rather than to employees represented by Local 16. A hearing was held on April 17 and 18, 1995, before Hearing Officer Jean M. Doane. Local 16, Streimer, and Local 290 have filed posthearing briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

Streimer is an Oregon corporation engaged in the fabrication and installation of heating, ventilating, and air-conditioning duct systems, as well as architectural and industrial sheet metal work and specialty metal fabrication. During the fiscal year preceding the hearing, Streimer purchased and received in Oregon directly from suppliers outside of Oregon goods and supplies valued in excess of $50,000.

Hoffman is an Oregon corporation engaged in the business of general contracting. In 1994, Hoffman purchased and received in Oregon directly from suppliers outside of Oregon goods and supplies valued in excess of $50,000.

The parties stipulated, and we find, that Streimer and Hoffman are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find that Local 16 and Local 290 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of the Dispute*

Streimer's business includes the installation of scrubber duct systems in manufacturing plants. A scrubber duct system controls air pollution by pulling air from the plant's work areas, removing contaminants, and releasing the decontaminated air outside the plant. The scrubber duct system includes magnehelic gauges. These devices measure air pressure, revealing whether or not air is flowing properly through the system. Magnehelics are normally installed on or near a duct to measure air pressure. In some instances, remote magnehelics are mounted near plant machinery and connected to a duct by tubing.

For several years, representatives of the Plumbers and the Sheet Metal Workers have been unable to resolve their dispute about which craft has jurisdiction over various aspects of scrubber duct installation, including the installation of magnehelics. In November 1994, Streimer employees represented by Plumbers Local 16 were installing magnehelic gauges and tubing for remote magnehelics in a scrubber duct system at the Aloha campus of Intel Corporation. Sheet Metal Workers' Local 290 Business Agent Al Shropshire testified that this activity provoked discussion at a union meeting that month. According to Shropshire, the shop steward for Fullman Company ''got up and was complaining that sheet metal was doing our work at Intel.'' Local 290 represents Fullman's employees.

On December 21, 1994, and February 14, 1995, Local 290 sent Streimer letters requesting information about the wages and benefits paid by Streimer ''to your plumbers and steamfitters.'' Streimer, which does not employ plumbers or steamfitters, did not respond to these letters.

Cliff Turner was Streimer's site superintendent at the Intel Aloha campus. He testified about a January 1995 conversation with Jeff Dehaan, who was a site foreman for Fullman Company. According to Turner, Dehaan said that Matt Walters, Local 290's business manager, was ''putting heat on him'' about Streimer doing Local 290 work. Walters, in his testimony, admitted asking Dehaan ''why and who was doing that [magnehelic installation] work and how long it was going to last.'' Walters denied claiming the work during this conversation. In mid-January, Turner turned over the remaining 2 to 3 days of magnehelic installation to the Fullman Co. Streimer anticipated, however, performing more work of this type for Intel in the future.

Local 290 picketed Streimer at its Portland shop on February 27 and 28 and March 6, 7, and 8 and picketed Streimer at its worksite at the Oregon Health

Sciences University on March 3, 1995. Walters authorized the picketing. The picket signs stated that ''Streimer Sheet Metal does not pay area standard wages to plumbers and pipefitters—Local 290.'' Local 290 Business Agent Shopshire testified that, in response to the picketing at Streimer's shop, one truck turned around without making its delivery. Bill Forsythe, Hoffman's superintendent at the university worksite, testified that the picketing on March 3 caused approximately 100 employees to leave or fail to report to work.

B. *Work in Dispute*

The parties were unable to agree on a description of the work in dispute. We find that the work in dispute is limited to the installation of tubing to remote magnehelic gauges and the actual installation of all gauges, with associated fittings. Although the specific dispute here took place against the background of an ongoing dispute between the two unions about which craft should install scrubber systems, we find no merit in contentions that the description of the work in dispute should encompass other aspects of scrubber system installation.

C. *Contentions of the Parties*

Local 290 disclaims interest in the work in dispute, denies the existence of a jurisdictional work dispute, and moves to quash the notice of hearing in this proceeding. It contends that it picketed Streimer for the sole objective of protesting Streimer's failure to meet area wage standards. In the event that the Board finds a jurisdictional dispute exists, Local 290 contends that the Board should award the work in dispute to employees represented by Local 290.

Streimer and Local 16 contend that there are competing claims to the work in dispute. They further contend that there is reasonable cause to believe that Local 290 violated Section 8(b)(4)(D) of the Act by picketing for the purpose of forcing the reassignment of the work in dispute to employees represented by Local 290. In this regard, Streimer and Local 16 contest the credibility of Local 290's area standards protest. Finally, Streimer and Local 16 contend that the Board should award the work in dispute to employees represented by Local 16 based on factors of the parties' collective-bargaining agreement, Streimer's past practice and preference of using its own employees, and because it prefers to continue this practice for both efficiency and economy. Streimer also asserts that industry practice is to assign the work to sheet metal workers.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

Local 290's disclaimer of the work in dispute and its contention that it picketed solely in furtherance of an area standards objective are not persuasive here. It is well established that ''[o]ne proscribed objective is sufficient to bring a union's conduct within the ambit of Section 8(b)(4)(D).'' *Cement Masons Local 577 (Rocky Mountain Prestress)*, 233 NLRB 923, 924 (1977). Without deciding whether Local 290's picketing had an area standards objective, we find reasonable cause to believe that the picketing had a proscribed object of forcing reassignment of the work in dispute to employees represented by Local 290. In so finding, we rely on: (1) the background of ongoing competing claims to scrubber installation work by the two craft unions involved here; (2) the undisputed fact that a steward's complaint about sheet metal workers performing the work in dispute triggered Local 290's investigation into Streimer's wage practices; (3) the fact that Local 290's letters purporting to ascertain those wage practices expressly focused on wages and benefits paid by Streimer ''to your plumbers and steamfitters;'' the Respondent may have been seeking to ascertain the wages of the employees then performing the work, but the fact that Respondent referred to these employees as ''plumbers and steamfitters'' strongly suggests that Respondent, at least in part, was claiming the work as its own, which Streimer did not employ, rather than to the sheet metal workers whom Streimer did employ to perform the work in dispute; and, finally, (4) the testimony of Streimer Superintendent Turner that Fullman Company Foreman Jeff Dehaan said that Walters was ''putting heat on him'' about Streimer doing Local 290 work.

Based on the foregoing, we find that there are competing claims to the work in dispute and that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. Furthermore, there is no evidence that all parties have an agreed-upon method for voluntary adjustment of the dispute. Accordingly, we find that the dispute is properly before the Board for determination.[1]

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors in-

[1] Accordingly, we deny Local 290's motion to quash the notice of hearing.

volved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Collective-bargaining agreements

Streimer does not have a collective-bargaining agreement with Local 290. Though its membership in the Columbia Chapter, Sheet Metal and Air Conditioning Contractors' National Association, Inc. (SMACNA), Streimer was a party to the master labor agreement between Local 16 and SMACNA that was effective from May 1, 1992, through April 30, 1995. Article I of this agreement provided for the recognition of Local 16 as the collective-bargaining representative of employees performing certain specific work, including ''all other work included in the jurisdictional claims of Sheet Metal Workers' International Association.'' Article I, section 5(m), of the Sheet Metal Workers' Constitution and Ritual claim the work of ''air pollution and recovery systems and component parts thereof, including setting of some by any method'' and also to ''testing and balancing of all air, hydronic, electrical and sound equipment and duct work.'' We find that this factor favors the award of the disputed work to the employees represented by Local 16.

2. Company preference and past practice

It is undisputed that Streimer prefers to assign the work in dispute to its employees, who are represented by Local 16, and that it has consistently assigned this work to them in the past. This factor favors an award to the employees represented by Local 16.

3. Area and industry practice

Testimony indicated that the area practice is to award the magnehelic gauge installation to the group of employees who are performing associated scrubber duct work. Generally speaking, it appears that air scrubber systems are generally awarded to sheet metal workers while systems with consortium crews of both sheet metal workers and plumbers have assembled systems with wet scrubber elements. We find that this factor favors neither group of employees in this dispute.

4. Relative skills

The evidence indicates that either group could perform this work. The factor of relative skills consequently favors neither group.

5. Economy and efficiency of operations

Witnesses testified that performance of the work in dispute is a periodic and minor aspect of other scrubber duct system work. It is more efficient and economical for Streimer to use its own employees to perform all of this work, rather than to halt work at various times and employ an additional group of employees represented by Local 290 to perform the work in dispute. We find that this factor favors awarding the disputed work to the employees represented by Local 16.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Local 16 are entitled to perform the work in dispute. We reach this conclusion relying on the factors of the collective-bargaining agreement, employer's preference and past practice, and the economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by Local 16, not to that Union or its members.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Streimer Sheet Metal Works, Inc., represented by Sheet Metal Workers International Union No. 16, AFL–CIO, are entitled to perform the installation of tubing to remote magnehelic gauges and the actual installation of all gauges, with associated fittings.

2. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 290, AFL–CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Streimer Sheet Metal Works, Inc., to assign the disputed work to employees represented by it.

3. Within 10 days from this date, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 290, AFL–CIO shall notify the Regional Director for Region 19 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

MEMBER BROWNING, dissenting.

Contrary to my colleagues, I do not believe the record contains evidence supporting a finding that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. Therefore, I would quash the notice of hearing.

The Respondent learned from union members that Streimer's employees were performing the disputed work. In December 1994, the Respondent, believing the disputed work came within its jurisdiction, wrote the Employer requesting information about the wages

it was paying the employees doing the work. The Employer did not reply.

The Respondent also contacted the Sheet Metal Contractors Association (Association), whose representative was in contact with the Employer. The Respondent advised the Association that Streimer's employees might be receiving less than area standards wages for performing the disputed work and assured the Association that it was not seeking to represent Streimer's employees or seeking reassignment of the work to employees represented by Local 290.

In February 1995, the Respondent wrote to the Employer again, requesting the same information and stating that the Union might engage in area standards publicity absent evidence the Employer paid area standards. The Employer did not reply, but the Association representative contacted the Respondent and suggested a meeting with Streimer. During the discussion, the Respondent again disclaimed interest in the work assignment. The Association canceled the scheduled meeting at the last minute.

Having received no response to its repeated requests, Local 290 on several days in February and March 1995 engaged in area standards picketing. The record contains no evidence that anyone made statements contradicting the area standards objective of the picketing.

In short, once the Respondent learned that work it believed within its jurisdiction was being performed, it sought to learn what wages the Employer was paying. It gave assurances that it was not seeking reassignment of the work and that it was only concerned about whether area standards were being met. When the Employer failed to reply to the Respondent's repeated requests for information, the Respondent commenced area standards picketing.

My colleagues reject the Respondent's statement that the picketing was in furtherance of an area standards objective and its disclaimer of interest in the work assignment. Instead, they find that there are competing claims for the disputed work, relying on essentially three facts: that Local 290 contends that the work is within its jurisdiction, Local 290 commenced investigating Streimer's wage rate after receiving complaints from Local 290 members about who was performing the disputed work, and Local 290 requested information about the wages Streimer was paying ''your plumbers and steamfitters.'' From these facts the majority draws an inference that an objective of the Respondent's picketing was to obtain the disputed work for employees it represents. I do not agree with my colleagues that such an inference is warranted.

Area standards picketing is an attempt to obtain ''employer adherence to prevailing area standards in order to prevent such standards from being undermined.'' *Carpenters Local 1570*, 189 NLRB 450, 453 (1971). The Board has long endorsed protection of area standards as a lawful objective, recognizing that a union has a legitimate interest in protecting the wages and benefits that it has already negotiated for employees that it represents in the area. See, generally, *Retail Clerks Local 899 (Giant Food)*, 166 NLRB 818, 823 (1967) (trial examiner's discussion of area standards issue). A union would hardly be interested in the protection of standards that it had negotiated in the area if the work were not in its jurisdiction, because it would not have negotiated any wages and benefits for work outside of its jurisdiction. Thus, I cannot agree that an area standards protest becomes unlawful jurisdictional picketing simply because witnesses testifying on behalf of the union have identified the work that is the subject of the protest as being within the union's jurisdiction.

Nor can an unlawful jurisdictional objective be inferred from the fact that union members identified the work as ''our work.'' This expression is merely a short hand way of saying that the work in question is within the Respondent's jurisdiction. As stated above, the Respondent would not have been interested in an area standards protest unless it had received information that an employer was performing work the Union believed was within its jurisdiction. Yet, the Respondent did not act upon its members' complaints by claiming the work or demanding that it be assigned to its members. To the contrary, once the Respondent received the complaints, it sought to verify whether Streimer was in compliance with area standards.[1]

My colleagues make much of the Union's request for information about wages paid ''to your plumbers and steamfitters'' as evidence of a proscribed objective because Streimer did not employ any plumbers or steamfitters. This reasoning defies common sense. The statement was not an illogical request for information about wages being paid for the disputed work to a nonexistent group of plumbers and steamfitters; it was a request for information about the wages Streimer was paying its employees performing the disputed work. There is simply no reasonable way to interpret the Respondent's statements regarding ''your plumbers and steamfitters'' other than as a reference to workers employed by Streimer.

In those cases in which the Board has found a purported area standards objective to be a subterfuge, the Board has identified some fact in the record that is inconsistent with a pure area standards objective. See, e.g., *Operating Engineers Local 825 (Harms Construction)*, 273 NLRB 833 (1984) (the respondent suggested the employer negotiate a contract with the respondent

[1] The majority, by emphasizing that a complaining member was a steward, is hinting, but not actually finding, that the steward was acting as an agent of the Respondent when complaining that the work was within the Respondent's jurisdiction. Were my colleagues to make such a finding, I could not agree with them.

covering the disputed work); *Plumbers Local 130 (Contracting Co.*), 272 NLRB 1045 (1984) (the respondent suggested the employer employ some employees represented by respondent). The record in this case is not only devoid of evidence inconsistent with an area standards objective, but indeed the Respondent's repeated assurances that it was not seeking reassignment of the work affirmatively evidence the Respondent's sole objective. Only when it became obvious that the Employer would not provide the requested information concerning the wages it was paying did the Respondent commence picketing. Its picket signs clearly stated that its protest was directed at Streimer's failure to pay area standards. Under these circumstances, I see no basis for concluding that the Respondent had any other objective.[2]

In sum, I do not believe the record supports finding that the Respondent's picketing was for any other objective than the stated area standards objective.[3] I would find that there are not competing claims for the disputed work and, accordingly, no reasonable cause to believe the Act has been violated. I therefore would quash the notice of hearing.

[2] My colleagues' rejection without discussion of the disclaimer and the Respondent's assurances that it was not seeking reassignment of the work diminishes the record evidence. In fact, I believe the Respondent's repeated disclaimers and assurances show a genuine attempt to investigate the Employer's wages, which Streimer deliberately frustrated.

[3] The final fact on which my colleagues rely is a statement purportedly made to another employer, which that employer's foreman allegedly reported to Streimer's superintendent. Apparently, my colleagues find this statement a not very reliable indicator of reasonable cause because it is mentioned only in passing. In this case, in which I find the record so clearly evidences that the Union's sole concern was area standards, I would not attribute any significance to this double hearsay testimony.